

SECRETARY OF STATE[721]

Notice of Intended Action

Proposing rule making related to petitions for rule making and waivers and providing an opportunity for public comment

The Secretary of State hereby proposes to amend Chapter 8, “Petitions for Rule Making,” and Chapter 10, “Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update two chapters of the Department’s rules in accordance with changes made by 2020 Iowa Acts, House File 2389, sections 7 and 10. The changes call for deletions of the word “variance” when the word is used in relation to “waiver.” The changes also call for sharing the disposition of rule-making petitions with the Administrative Rules Review Committee.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on February 16, 2021. Comments should be directed to:

Molly Widen
Office of the Iowa Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.5864
Email: mollywiden@sos.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 8.4(1) as follows:

8.4(1) Within 30 days after the filing of a petition, the agency must submit ~~a copy of the petition and any accompanying brief~~ the petition, any accompanying brief, and the disposition of the petition to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

ITEM 2. Amend **721—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 3. Amend **721—Chapter 10**, title, as follows:

WAIVER AND VARIANCE RULES

ITEM 4. Amend rule 721—10.1(17A) as follows:

721—10.1(17A) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 5. Amend rule 721—10.4(17A) as follows:

721—10.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 721—10.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

ITEM 6. Rescind rule **721—10.12(17A)**.

ITEM 7. Renumber rules **721—10.13(17A)** to **721—10.16(17A)** as **721—10.12(17A)** to **721—10.15(17A)**.